

Appl. No.: 10/759,778  
Amdt. Dated December 14, 2004  
Reply to Office Action of June 15, 2004

#### REMARKS/ARGUMENTS

Claims 25-45 are currently pending in the present application. Claims 25-33 have been rejected under 35 U.S.C § 101 as allegedly claiming the same invention of claims 5-10 of prior U.S. Patent No. 6,698,828. Claims 34-43 have been rejected under the judicially-created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-4 and 11-16 of U.S. Patent No. 6,698,828. Claims 34, 38, 39, 44 and 45 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 924,396 issued to Spoljar.

Claim 26 has been amended to state that the first and second back legs extend at an angle greater than ninety degrees relative to the seat frame. Support for the amendment to claim 26 can be found in the various drawing figures. Claims 34 and 44 have been amended to particularly point out that the back leg abuts against the rearward-facing outer surface of the seat frame. Claim 35 has been amended in light of the amendment to claim 34. Applicant submits the remaining claims without amendment. As currently presented, the claims are neither anticipated, nor obvious, in view of the prior art cited by the Examiner.

#### Double Patenting Rejections

Applicant respectfully requests reconsideration of the double patenting rejection under 35 U.S.C § 101 as to claim 25. Claims 5 to 10 of U.S. Patent No. 6,698,828 all recite first and second front legs attached to the seat frame. Claim 25 of the instant application, however, does not require first and second front legs. Accordingly, Applicant submits that the rejection is improper as the same invention is not claimed in claims 25 and 29 to 33. Furthermore, Applicant has amended claim 26 to state that "the first and second back legs extend at an angle greater than ninety degrees relative to the seat frame," thereby obviating the double patenting rejection under 35 U.S.C. § 101 as to claims 26 to 28.

Applicant also submits herewith a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome the rejection under the judicially-created, obviousness type double patenting doctrine.

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The Prior Art Fails to Establish Prima Facie Case of Invalidity

U.S. Patent No. 924,396 Spoljar

Spoljar discloses a folding chair that includes a seat frame 1, a seat back 3 hinged to the rear edge of the seat frame 1, and a back leg 11 also hinged to the underside of the seat frame at the rear edge. In an assembled state, the seat back 3 locks into a groove defined in the top surface of the back leg 11 and abuts against the rearward-facing surface of the seat frame 1. The seat back 11, when the chair is an assembled state, abuts against the underside of the seat frame 1, while the extension 15 abuts against and engages the seat back 1.

Applicants respectfully request reconsideration of the present application. Claims 44 states that "the lateral upright, in an assembled state, abuts against the upper surface of the lateral seat member." Similarly, claim 38 states that "the opposing lateral uprights of said backrest frame, in an assembled state, abut against the upper surfaces of the first and second opposing lateral members of said seat frame." Spoljar when properly analyzed fails to disclose or suggest the invention of claims 38, 39 and 44. The Examiner appears to allege that the "backrest frame abuts an upper surface of lateral members of the seat rest frame," see Office Action at 3; however, Figure 1 of Spoljar clearly shows that the backrest frame 3 abuts against the rearward-facing, lateral surface of the seat frame 1. Spoljar, therefore, fails to disclose or suggest the invention defined by claims 38, 39 and 44.

Similarly, Spoljar fails to disclose or suggest the invention of claims 34 and 45 as currently amended. According to the invention of claim 45 the back leg, in an assembled state, abuts against the rearward-facing outer surface of the lateral seat member. Similarly, according to claim 34 the back legs, in an assembled state, abut against the rearward-facing outer surface of the seat frame. In contrast, Spoljar teaches a folding chair where the back leg 11 abuts against the under (lower) surface of the seat frame, while the back leg extension 15 abuts against the rearward-facing surface of the seatback frame 3 (and not the rearward-facing outer surface of the seat frame).

In light of the foregoing, Applicant believes that all currently pending claims are presently in condition for allowance. Applicant respectfully requests a timely Notice of Allowance be issued in this case.

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If the Examiner believes that a telephone conference would expedite prosecution of the present application, the Examiner is invited to call the undersigned at the telephone number set forth below.

Respectfully Submitted,  
LAW OFFICE OF MARK J. SPOLYAR  
By



Mark J. Spolyar  
Reg. No. 42,164

Date: December 13, 2004

Customer Number: 30505  
Law Office of Mark J. Spolyar  
38 Fountain St.  
San Francisco, CA 94114  
415-826-7966  
415-480-1780 fax

Page 10 of 10